IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 778 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYSINH BABARSINH CHAUHAN - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MITESH R AMIN for Appellant(s) : 1,
MR. K.T.DAVE, APP for Respondent (s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 9/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Challenge in this Appeal filed under Section 374 of the Code of Criminal Procedure (“the Code” for short) is to the correctness of the judgment and order dated 27.8.2002 rendered in Sessions

Case no.61 of 2001 by the learned Additional Sessions Judge, Ahmedabad (Rural) at Gandhinagar, by which the sole appellant – Vijaysingh Babarsingh Chauhan ("the accused" for short) has been convicted for commission of the offence punishable under Section 304 of the Indian Penal Code ("IPC" for short) and sentenced to suffer RI for 10 years and fine of Rs.1000/-, in default of payment of fine SI for 3 months.

2. Since the facts of the case have been detailed in the judgment of the learned Additional Sessions Judge, Ahmedabad (Rural), Gandhinagar, it is not necessary for us to repeat the same all over again in verbatim and in detail in this judgment. However, the basic facts which are necessary to be discussed in this Appeal are as under:

2.1 PW-5 Jhalamsingh Babsingh Jhala, the complainant is residing with his parents and children at Mitha Muada, Taluka Dahegam, District Gandhinagar and is doing agriculture work. They are two brothers. Arjunsingh is the younger one. The complainant has two sisters namely Sajjanben and Nanduben. Sajjanben had married with the accused of village Lavad three years prior to the date of incident and the younger one Nanduben has married with Karansingh Babasingh in the same house. The complainant's maternal uncle Adarsingh of village Shiavada,

initiated for the said marriages. As Sajjanben, was carrying 7 month of pregnancy and as it was a custom to perform first delivery at the parental place, Sajjanben was brought to her house after performing purificatory ceremony. The younger Nanduben was staying with the complainant because anu ceremony was not performed.

2.2 On 29.4.2001, complainant's father Babsingh Kalusingh had gone to attend a marriage at village Shiavada in the morning and he stayed there. The accused came to his house on that day. The accused and the complainant went to Shiavala at 9 O' Clock at night on Sunday because there was a marriage of the son of his maternal uncle Narsingh Adarsingh of Shiavala. On 30.4.2001, both of them came directly to their field in the early morning at about 3:30 or 4 O' Clock and slept in the field. They got up thereafter and went home. His mother Revaben had gone to Dholtabad to see the son of the complainant's maternal uncle as he was injured. The complainant and the accused went to attend a marriage at Shiavala again and returned to the house at 8 O' Clock in the night. At that time, the wife of the complainant Kiranben and elder sister Sajjanben and younger sister Nanduben were at home. The brother of the complainant Arjunsingh had gone to a galla after taking meal. As the complainant's mother had gone to Dholtabad and father had gone to Shiavala, they

did not return. The complainant and the accused sat for meal at about 8:30 pm. The elder sister of the complainant Sajjanben was serving meal to them. At that time, the accused said to the sister of the complainant “you get Rs.10,000/- from your parents and brother, and give me”. The complainant and his sister told him that their parents are out of station, so they will talk to them when they return. At that time the younger sister Nanduben and the wife of the complainant were outside. The accused demanded Rs.10,000/-. Thereafter the brother of the complainant Arjunsingh returned to home at about 9 O' Clock and went towards the field. The complainant, the accused and his sisters slept in the osri at about 10 O' Clock. The wife of the complainant slept in the house.

2.3 On 1.5.2001, when the complainant got up at about 4 O' Clock early in the morning, the accused and his elder sister Sajjanben were not in their bed. When the complainant was going for urination, he heard a noise of scuffle on terrace of the house. He went upstairs in the terrace and saw that the accused was strangulating his sister Sajjanben by lying her down. His sister was panting for breath. The complainant shouted “what are you doing”, the accused immediately got up and rushed towards the complainant and dashed him as the complainant was going to hold him. The accused got down and ran away. The complainant saw that

his sister was panting for breath. Since the complainant shouted, his sister Nanduben, his wife, Fulsingh Dhulsingh and other persons from the neighbourhood rushed towards the terrace. In the meantime the sister of the complainant died by panting. As the father of the complainant did not come from Shiavala and his mother from Dholtabad, the complainant sent the vehicle to call his parents.

2.4 The aforesaid incident was conveyed to PW-7, Vikramsingh Kirtisingh Jadhav, PSI of Rakhial Police by Natwarsingh Velji, Police Constable by giving telephone worthy. Therefore, PW-7 Vikramsingh Kirtisingh Jadhav went to the place of the incident along with police personnel.

2.5 A Complaint for the aforesaid incident was lodged by PW-5 Jalamsingh Babsingh Jhala, the brother of the deceased Sajjanben, which was reduced into writing as per the narrations given by PW-5 Jhalamsingh Babsingh Jhala and beneath the same his signature was obtained. The said complaint is on record at exh.24. As per the complaint, the motive behind the crime was that the accused demanded Rs.10000/- from the parents of deceased Sajjanben which was not paid any attention and therefore accused in the early morning of 1.5.2001 while deceased Sajjanben was sleeping on terrace throttled her and killed her.

2.6 Thereafter he held the inquest on the dead

body of Sajjanben in the presence of Executive Magistrate and sent the dead body for autopsy to Primary Health Center, Rakhial. Panchnama of scene of the offence was drawn. He has also recovered the clothes from the dead body of Sajjanben. Panchnama of the person of the accused was also prepared in the presence of the panchas, underwear of the accused was also recovered and sent the muddamal to FSL for chemical analysis.

2.7 On receipt of the autopsy report as well as report from FSL, as sufficient incriminating evidence was found against the accused for commission of the offence of murdering his wife Sajjanben who was carrying pregnancy of 7 months, he filed chargesheet against the accused for commission of the offence punishable under Section 302 IPC in the Court of learned JMFC, Dahegam.

2.8 As the offence under Section 302 IPC is exclusively triable by the Court of Sessions, the learned JMFC, Dahegam, committed the case to the Sessions Court, Ahmedabad (Rural), Gandhinagar.

2.9 The learned Additional Sessions Judge, Ahmedabad (Rural), Gandhinagar, to whom the case was made over for trial, framed charge against the accused for commission of the offence punishable under Section 302 IPC. The charge was read over and explained to the accused. As the

accused pleaded not guilty to the charge, he was put to trial and tried by the learned Additional Sessions Judge, Ahmedabad (Rural), Gandhinagar in Sessions Case No. 61 of 2001.

2.10 In order to bring home the charge leveled against the accused, the prosecution has, in all, examined as many as 7 witnesses, the details of which have been given in paragraph 6 of the impugned judgment and order, they are as under:

Witness	**Exhibit**	**Name**	**Status**	**Page No.**
PW-1	18	Jyotsnaben Pravinsingh Jhala	Panch of inquest Panchnama.	48
PW-2	20	Mohabatsingh Prabhatsingh Jhala	Panch of the scene of offence.	52
PW-3	21	Nanduben Babsingh Jhala	Sister of the decease Sajjanben.	54
PW-4	22	Rajankumar Lalabhai Kanoriya	Doctor who performed autopsy on the dead body	57
PW-5	23	Jhalamsingh Babsingh Jhala	Complainant and brother of the deceased.	61
PW-6	25	Fulsingh Dhulsingh	Neighbour	68
PW-7	26	Vikramsingh Kirtisingh Jadhav	PSI and IO	71

2.11 To prove the culpability of the accused, the prosecution has also produced number of documents and relied upon the contents of the same, details of which, enumerated in paragraph 7 of the impugned judgment and order, are as under:

Exh.	Particulars	Page No.
6	Telephone worthy	22
7	Yadi to Executive Magistrate.	23
8	Panchnama of the scene of offence.	24
9	Panchnama dated 1.5.2001 of seizure of clothes from the dead body of the deceased.	26
10	PM report dated 1.5.2001	27
11	Panchnam of the person of the deceased.	36
12	Forwarding letter	38
13	Letter of FSL dated 7.5.2001	42
15	Letter of FSL dated 6.5.2001	45
19	Inquest panchnama dated 1.5.2001.	50
24	Complaint dated 1.5.2001	65
27	Serological Report of FSL dated 25.5.2001.	75
28	FIR form	76

2.12 After recording of the evidence of the prosecution witnesses was over, the trial Court, explained to the accused the circumstances appearing against him in the evidence of the

prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution in its entirety. He has also tendered written explanation wherein he has reiterated that false case has been filed against him. He has not inflicted any injury on his wife Sajjanben. He has not demanded Rs.10,000/- either from his wife or from her parents. He has also stated that he had a sexual intercourse with his wife Sajjanben. Complainant Jhalamsingh Babsingh Jhala became angry upon them and excited and therefore he left the place. At that time his wife was alive. Thereafter he does not know as to what has happened to his wife. However, he did not lead any evidence nor did he examine any witness in support of his defence.

2.13 On appreciation, evaluation, analysis and scrutiny of the evidence, the trial Court came to the conclusion that the homicidal death of the deceased Sajjanben has been duly proved. It is also held by the trial Court that the act of the accused is not a murder within the definition and meaning of Section 300 IPC punishable under Section 302 IPC. The trial Court has further held that the act of the accused was culpable homicide, not amounting to murder, punishable under Section 304 IPC. On the basis of the said finding, the trial Court

has convicted the accused for commission of the offence punishable under Section 304 IPC and sentenced him to suffer RI of 10 years and fine of Rs.1000/-, in default of payment of fine SI for 3 months, which has given rise to the instant Appeal at the instance of the accused.

3. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read an re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. This court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

4. To prove the fact that the deceased died homicidal death, the prosecution has examined and relied upon the oral testimony of PW-4 Dr. Rajankumar Lalabhai Kanoria at exh.22, page 57. He has inter alia testified that on 1.5.2001 at 2:45 pm he was on duty in Primary Health Center, Mithana Muvada as Medical Officer. At that time

dead body of Sajjanben was brought by Hiraji Khat, Police Constable, B.No. 1003 from Rakhial Primary Health Center. He performed the PM exmination on the dead body of Sajjanben. During PM examination, he noted the following external injuries which are enumerated in column 17 of the PM Note, which is on record at exh.10:

"17. Multiple bruises Marks on Neck.

(1) A big bruises about 4 cmx 2cm on Rt. Side of Neck 5cm away from mid line just directed down ward and outward below the level of thyroid cartilage.

(2) A big Bruises about 6cm x 2 cm present above the thyroid cartilage goes outward and upward backwards towards the angle of left Mandible.

(3) A small brush mark about 2 cm x 2 cm about 4 cm away from the midline Lt. Side of thyroid cartilage.

(4) A small Bruises 2 cm x 1 cm on mid line at the level of thyroid cartilage.

He has also noted that Uterus is enlarge and gravide 28 wk of pregnancy, about 30 cm Annoit Fluid and dead foetus (male) about 2 kgs.

So far as the cause of death of the deceased is concerned, according to him it was due to Asphyxia and Vasovagal shock because of throttling.

5. In view of the aforesaid oral testimony of PW-4 Dr. Rajankumar and PM Note at exh. 10, there is

no dispute that the deceased died because of Asphyxia and vasovagal shock because of throttling. Therefore it is duly proved that the deceased died a homicidal death. The trial Court has, therefore, rightly held that the deceased died a homicidal death and we affirm the said finding.

6. Having held that the deceased died a homicidal death, the next question which calls for determination is as to who was the author of the injuries caused to deceased Sajjanben.

7. In this connection, it would be appropriate to refer to the oral testimony of PW-2 Nanduben Babsingh Jhala (sister of deceased Sajjanben) at exh. 21, page 54. She has inter alia testified that her sister had married to the accused. As her sister become pregnant, she came to her house for purificatory ceremony. At that time, the accused came to her house. During night hours they all slept. Early in the morning she heard the shouts on terrace to the effect that “what are you doing Vijaysingh”. Therefore, she and her aunt came out of the house. Fulsingh also came from his house. They went upstairs. At that time they saw accused running away from the ladder. At that time his brother Jhalamsingh called Sajjanben but Sajjanben could not utter a word and she has died. He also saw mark of throttling on the neck of Sajjanben. There were CLW on her elbow as well as knee joints. His brother Jhalamsingh told her that the accused has throttled Sajjanben and killed

her. It may be noted that she was cross-examined by the learned advocate of the accused. However, during her cross-examination nothing substantial could be brought out by the learned advocate of the accused, which would impeach her credibility. Therefore, she withstood the test of cross-examination.

8. The prosecution thereafter has relied upon the oral testimony of PW-5 Jhalamsingh Babsingh Jhala, complainant at exh. 23, page 61, who has lodged the complaint. He has inter alia testified that he is staying at Mithana Movada alongwith his parents and his deceased sister had married with the accused prior to 4 years of the incident. On 29.4.2001, the accused came to his house for receiving money. He and the accused went to village Shiyavada to attend the marriage ceremony. They came late in the night. They slept in the field and in the next day morning they went to their house. Thereafter, he and the accused sat together for taking meals. His sister Sajjanben was serving them. At that time the accused told him that at any cost they should give him Rs.10000/. The complainant told the accused that they should talk after his parents come to the house. Thereafter, the accused, Sajjanben and Nanduben slept on the cots in Osari. He further testified that on 1.5.2001 he wake up for urination. At that time he noticed that Sajjanben and the accused were not in their bed and he heard some shouts and scuffling, therefore he went to the terrace of

his house where he saw that the accused was throttling her sister after lying her down. Therefore, he asked the accused what was he doing. At that time the accused tried to flee and he tried to catch hold of him. However, by giving dash to him he ran away. Thereafter, he saw his sister was writhing. Therefore, he shouted and on hearing his shouts, Fulchand, Nanduben and his wife came on the terrace with neighbourers. They tried to call Sajjanben, but she should not speak as she has died. According to him, the reason for killing her sister was that the accused was demanding Rs.10,000/- which was not given to the accused. The complainant also lodged a complaint in this regard which is at exh. 24. He was cross-examined at length but nothing substantial has been brought out during his evidence which would impeach his credibility.

9. The prosecution has, thereafter, examined PW-6 Fulsingh Dhulsingh at exh. 25, page 68, who is the neighbour of PW-5 Jhalamsingh Babsingh Jhala. He also testified the similar version as testified by PW-3 Nanduben Babsingh Jhala as well as PW-5 Jhalamsingh Babsingh Jhala. It may be noted that he is a independent witness and his evidence completely corroborates the evidence of PW-3 as well as PW5. This is the sum and substance of the evidence of the prosecution witnesses.

10. On overall reappreciation, reevaluation, reanalysis and threadbare close scrutiny of the

evidence on record of the prosecution witnesses, there is no escape from the conclusion that the accused was the author of the injuries caused to the deceased Sajjanben. The accused has demanded Rs.10,000/- while he came to the house of his wife who was carrying 7 months pregnancy. As the family members of deceased Sajjanben could not satisfy the demand of Rs.10,000/-, he committed this heinous act of killing his wife.

11. At this stage, it is required to be noted that the finding recorded by the trial Court to the effect that the accused has committed an offence of culpable homicide not amounting to murder, is absolutely, according to us, erroneous and not based on appreciation of evidence. According to us, the offence which the accused has committed is murder within the meaning and definition of Section 300 IPC punishable under Section 302 IPC. Since the State has not filed Appeal against the acquittal of the accused for commission of the offence under Section 300 IPC, which is punishable under Section 302 IPC, we are left with no option except to confirm the judgment and order of conviction, convicting the accused for commission of the offence of culpable homicide not amounting to murder punishable under Section 304 and the same has to be upheld and maintained. Therefore, we leave the matter as it is.

12. In aforesaid view of the matter, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction

and sentence.

13. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the trial court and as the appeal lacks merit, it deserves to be dismissed.

14. For the foregoing reasons, the appeal fails and accordingly it is dismissed. Resultantly, the judgment and order dated 27.8.2002 passed by the learned Additional Sessions Judge, Ahmedabad (Rural), Gandhinagar, in Sessions Case No.61 of 2001 convicting the accused under Section 304 IPC and sentencing him to undergo RI for 10 years and fine of Rs.1000/- i.d., S.I. for further period of 3 months, is confirmed and maintained.

(A.M.Kapadia,J)

(K.A.Puj,J)

Jayanti*